

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)	ORDER GRANTING
BY DENISE HAERTER, SIOUX FALLS, SOUTH)	SUMMARY JUDGMENT;
DAKOTA, AGAINST MCIWORLD.COM AND)	FINAL DECISION AND
QWEST CORPORATION REGARDING)	ORDER; NOTICE OF ENTRY
UNAUTHORIZED SWITCHING OF SERVICES)	OF DECISION AND ORDER
)	CT02-033

On August 19, 2002, the Public Utilities Commission (Commission) received a complaint filed by Denise Haerter, Sioux Falls, South Dakota (Complainant), against MCIWorldCom (MCI) and Qwest Corporation (Qwest) regarding unauthorized switching of services.

On August 22, 2002, the complaint was faxed to MCI and Qwest. Pursuant to ARSD 20:10:01:09, MCI and Qwest were notified that they must satisfy the complaint or file answers in writing with the Commission by September 11, 2002. On September 10, 2002, the Commission received an answer and motion to dismiss from MCI. On September 11, 2002, the Commission received an answer from Qwest. On November 20, 2002, the Commission granted MCI's motion to dismiss. On November 27, 2002, the Commission received a motion for summary judgment (Motion), a brief in support of motion for summary judgment, affidavit of Colleen Sevold and notice of hearing from Qwest.

The Motion was scheduled for hearing at a special meeting of the Commission on December 11, 2002, at which time, the Commission voted unanimously to grant the Motion in favor of Qwest.

Having considered the Motion, the pleadings of the parties including attachments thereto, the affidavits filed by the parties and the oral arguments of the parties at the hearing, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

1. The complaint was filed by Denise Haerter against MCI and Qwest on August 19, 2002, alleging that either or both of Qwest or MCI changed the company providing long distance telecommunications service to Complainant without Complainant's consent. On September 10, 2002, the Commission received an answer and motion to dismiss from MCI. On September 11, 2002, the Commission received an answer from Qwest. Both MCI's and Qwest's answers were timely filed.

2. In its answer, Qwest admitted that upon Complainant's request for a change in long distance carrier service, the incorrect interstate long distance company was entered on Complainant's account as a result of a clerical error by Qwest. Qwest having taken responsibility for the unauthorized change in long distance company on Complainant's account, the Commission dismissed the complaint against MCI.

3. According to the Affidavit of Colleen Sevold filed by Qwest (Affidavit), Complainant placed a single change order to transfer her long distance telephone service in June 2002. While entering Complainant's change order, Qwest's employee made a clerical error which caused the incorrect presubscribed interstate telecommunications company to be placed on Complainant's account. Due

to this error, Complainant's long distance telecommunications company was switched from AT&T to MCI without Complainant's consent.

4. The unauthorized change in Complainant's long distance telecommunications company switched the long distance company serving two telephone lines on Complainant's account.

5. The switch of the telecommunications company serving Complainant's two telephone lines occurred as a result of one change of telecommunications companies serving Complainant.

6. According to the Affidavit, the incorrect change of Complainant's long distance telecommunications company was unintentional.

7. Complainant offered no evidence to contradict the Affidavit's account of what occurred.

8. The Commission finds that there is no genuine issue of material fact as to the circumstances under which Complainant's long distance company was changed without her authorization.

9. The Commission finds that Qwest initiated only one telecommunications carrier change without Complainant's authorization even though two lines on Complainant's account were thereby changed.

10. The Affidavit states that Qwest has reimbursed Complainant for all MCI charges as a result of the unauthorized change of carriers.

CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13 and 49-31, including 49-31-89 through 49-31-97, inclusive.

2. SDCL 49-31-89 provides that "the telecommunications company of any subscriber may not be changed without the telecommunications service subscriber's authorization." SDCL 49-31-97 defines "subscriber" as "any person who contracts with a telecommunications company for telecommunications services."

3. SDCL 49-31-93 provides that "a subscriber is not liable for any charges imposed by a telecommunications company that initiates a telecommunications carrier change without authorization from the subscriber" and that "the telecommunications company that initiates the unauthorized change . . . shall pay to the subscriber one thousand dollars."

4. The conduct prohibited by SDCL 49-31-89 is the change of the telecommunications company of a subscriber. Subscriber is defined as the person contracting for telecommunications services from a company. The statutes make no reference to individual lines.

5. The Commission concludes that where the subscriber is contracting with one company for service to two lines on one account and a telecommunications company initiates an unauthorized change of the company providing such telecommunications services, the telecommunications company initiating the change has initiated only one unauthorized change of a telecommunications company.

6. The Commission concludes that the pleadings and affidavits of the parties do not demonstrate the existence of a genuine issue of material fact.

7. The Commission concludes that Complainant is entitled to judgment as a matter of law against Qwest for one occurrence of the initiation of a change of Complainant's telecommunications company without Complainant's consent. Pursuant to SDCL 1-26-18 and 49-31-93, summary judgment is accordingly granted in favor of Complainant and against Qwest for the amount of the unauthorized services provided by MCI to the extent that Qwest has not yet provided credits or refunds of such charges and, in addition to the reimbursement of such charges, to a payment of one thousand dollars (\$1,000).

8. Complainant is not entitled to a second payment of one thousand dollars since only one change of telecommunications company occurred, and summary judgment is accordingly granted in favor of Qwest and against Complainant on her claim for the second one thousand dollars.

It is therefore

ORDERED, that Qwest shall reimburse Complainant for all charges for unauthorized services provided by MCI to the extent credits or refunds of such unauthorized charges have not previously been made and, in addition to such reimbursement, pay Complainant one thousand dollars (\$1,000.00) and that Complainant's claim for payments over and above such amounts is denied.

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on this 3rd day of January, 2003. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition therefor and ten copies with the Commission within 30 days from the date of issuance of this Final Decision and Order. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision within thirty (30) days after the date of service of this Notice of Decision and Order.

Dated at Pierre, South Dakota, this 3rd day of January, 2003.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: _____

Date: _____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ROBERT K. SAHR, Commission

